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YENG CHONG REALTY BHD

v.

TENAGA NASIONAL BHD & ORS

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HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[ORIGINATING SUMMONS NO: 24-257-2004]
27 SEPTEMBER 2006

C ***CIVIL PROCEDURE:*** *Injunction - Injunction against order of land administrator - Injunction applied for while appeal to state authority pending - Whether application for injunction premature - Whether unsustainable - Electricity Supply Act 1990, ss. 11, 16*

D The plaintiff purchased two plots of land ('the Jasin land') from the 2nd and 3rd defendants respectively, but had yet to register the transfer thereof. Subsequently, upon an enquiry held under ss. 11 and 16 of the Electricity Supply Act 1990 ('the Act'), the land administrator made an order permitting the 1st defendant to
E erect certain installations on the Jasin land, and for compensation to be paid to the 2nd and 3rd defendants, the registered owners thereof. Aggrieved, the plaintiff appealed to the state authority against the order pursuant to ss. 11(7) and 16(2) of the Act. However, pending hearing of the appeal, the plaintiff took out an
F originating summons and applied for an injunction to restrain the 1st defendant from entering the Jasin land and from making any payment by way of compensation to the 2nd and 3rd defendants. The defendants objected, whereof, before the learned judge, an issue arose as to whether the plaintiff's originating summons was
G on the facts premature and hence unsustainable in law.

Held (dismissing the plaintiff's application):

(1) The statutory appeal procedure contained in ss. 11(7) and 16(2) of the Act, which the plaintiff had invoked, must first
H be exhausted before the plaintiff could come to this court, either for the equitable remedy of injunction or for any other remedy. (para 20)

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(2) The injunction, if granted, would have the effect of restraining the 1st defendant from entering on the Jasin land and from paying compensation to the 2nd and 3rd defendants. That would in turn be tantamount to setting aside the subsisting orders of the land administrator, when that jurisdiction is exercisable by the state authority in hearing and determining the plaintiff's said appeal. Clearly, it is only after the state authority has disposed of the plaintiff's appeal that the plaintiff, if still aggrieved, may proceed to take whatever steps necessary to protect its legal rights. (para 21)

(3) The plaintiff's application is premature and wholly unsustainable and is therefore dismissed with costs. (para 23)

[Order accordingly]

Case(s) referred to:

Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd [2002] 3 CLJ 624 CA ***(refd)***

Keet Gerald Francis Noel John v. Mohd Noor Abdullah & Ors [1995] 1 CLJ 293 CA ***(refd)***

Legislation referred to:

Electricity Supply Act 1990, ss. 11(7), 16(2)

For the plaintiff - AG Dicom; M/s AG Dicom & Co
For the 1st defendant - Raiza Zakaria; M/s Albar & Partners
For the 2nd & 3rd defendants - SK Leong; M/s SC Lim & Partners

Reported by WA Sharif

JUDGMENT

Low Hop Bing J:

Application

[1] This application demonstrates the importance of having in place a pool of legal knowledge in civil procedural law so as to put the horse before the cart and not otherwise.

[2] *Vide ex parte* originating summons in encl. (2), the plaintiff is seeking an injunction to restrain the first defendant ("D1"), its agents or employees from entering on two pieces of land held

under Lots No. 4407 and 4408 respectively in the mukim of Air Panas district of Jasin (collectively "the Jasin land"), and from making any payment by way of compensation to the second and third defendants ("DD2 and 3") respectively.

Factual Background

[3] From the various affidavits filed herein, the relevant factual background may be unfolded as follows:

[4] On 23 April 1997, the plaintiff entered into two sale and purchase agreements with DD2 and 3 respectively whereby the plaintiff has agreed to buy the Jasin land from DD2 and 3. The plaintiff alleged that it has paid the purchase price to DD2 and 3.

[5] On 5 August 1999, the parties executed the transfer forms but the transfer has yet to be registered. The plaintiff claimed to be the beneficial owner of the Jasin land.

[6] On 24 May 2004, the plaintiff received two letters, both dated 10 May 2004, from the land administrator Jasin informing the plaintiff of an enquiry to be held on 27 May 2004 to determine D1's right to enter on the Jasin land and to assess the amount of compensation, respectively pursuant to s. 11 and s. 16 of the Electricity Supply Act 1990.

[7] For brevity and convenience, a reference hereinafter to a section is a reference to that section in the Electricity Supply Act 1990 unless otherwise stated.

[8] One Piong Chee Yu, a director of the plaintiff, attended the enquiry. The respective representative of DD1, 2 and 3 also attended. The plaintiff's director alleged that he was not given the opportunity to raise the plaintiff's interest in the Jasin land and that the land administrator had in breach of the rules of natural justice failed to record his objection pertaining to the holding of the enquiry.

[9] At the enquiry, the land administrator made an order permitting D1 to enter on the Jasin land and also assessed the compensation in favour of DD2 and 3.

[10] On 28 May 2004, DD2 and 3 which are within the group of Kumpulan Emas Berhad ("KEB") through KEB notified the plaintiff of the above assessment by the land administrator.

[11] On 14 June 2004, the plaintiff had pursuant to s. 11(7) and s. 16(2) appealed to the state authority against the land administrator's orders. The appeal is pending disposal. There was no application for stay of the land administrator's orders.

[12] Pursuant to the land administrator's orders, D1 had entered on the land, felled the trees and plants, cleared the land and erected posts to demarcate the area for the purpose of putting in place D1's installations.

[13] All the defendants alleged, *inter alia*, that DD2 and 3 are the registered owners of the land and that the plaintiff had not completed the payment of the full purchase price for the Jasin land and so no transfer can be registered.

Enquiry Before Land Administrator

[14] In urging the court to grant the injunction, plaintiff's learned counsel Mr. AG Dicom referred to the enquiry before the land administrator against whom he had complained of denial of the rules of natural justice.

[15] Miss Raiza Zakaria contended for D1 that the plaintiff's application in encl. (2) is premature as the plaintiff has lodged an appeal under s. 11(7) and s. 16(2). She relied on *Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd* [2002] 3 CLJ 624 CA.

[16] DD2 and 3's learned counsel Mr. SK Leong associated himself with D1's contention.

[17] In my view, it is trite law that generally a judge hearing an application for an interlocutory injunction should embark upon the three steps set out by Gopal Sri Ram JCA in delivering judgment for the Court of Appeal in *Keet Gerald Francis Noel John v. Mohd Noor bin Abdullah & Ors* [1995] 1 CLJ 293.

[18] However, where the submissions raised for the parties revolve around a specific preliminary issue such as in the instant application, the first instance judge has the duty to resolve it as the determination thereof may very well dispose of the entire application.

[19] For this purpose, having regard to the aforesaid submissions, it is abundantly clear that the sole issue for determination by me is whether the plaintiff's application herein is premature in the light of the plaintiff's appeal to the state authority, lodged under s. 11(7) and s. 16(2).

[20] I entertain no doubt that the statutory appeal procedure contained in s. 11(7) and s. 16(2), which the plaintiff had invoked, should be exhausted by the plaintiff first, before it can come to this court, either for the equitable remedy of injunction which is within the private law domain or any other remedy such as judicial review which is within the ambit of public law.

[21] It must be borne in mind that the injunction, if granted, would have the effect of restraining D1 from entering on the Jasin land and from paying compensation to DD2 and 3. That would in turn be tantamount to the setting aside of the subsisting orders of the land administrator, when that jurisdiction is to be exercised by the state authority in hearing and determining the plaintiff's said appeal. It is obvious that the proper forum under s. 11(7) and s. 16(2), which the plaintiff had invoked earlier on, is the state authority. The plaintiff must first pursue and exhaust that statutory right of appeal to the state authority and the state authority must be allowed to exercise that jurisdiction. The plaintiff cannot leapfrog and I cannot usurp the jurisdiction of the state authority. After the state authority has disposed of the plaintiff's appeal, the plaintiff, if aggrieved thereby, may proceed to take whatever steps as may be necessary and advisable to protect its legal rights.

[22] Support for my view may be found in *Tekali Prospecting Sdn Bhd, supra*, where in accordance with s. 11(6), the land administrator had issued a notice to conduct an enquiry but the notice being defective was cancelled. The land administrator then issued a second notice but the enquiry was never held as the respondent (land owner therein) had earlier on moved to the High Court for judicial review to quash the s. 11 notice, which the learned High Court Judge had granted. In allowing Tenaga's appeal, Gopal Sri Ram JCA who delivered the judgment of the Court of Appeal upheld Tenaga's contention that:

(1) the land owner's act of by-passing the statutory appeal procedure housed in the Act was a premature action, for it truncated the appeal procedure prescribed by the Act; and

(2) if the land owner has any complaints about compensation, they can be first addressed by way of the statutory appeal procedure under s. 16(2), after which the aggrieved land owner may move by way of an application for judicial review.

Conclusion

[23] On the foregoing grounds, I am of the view that the short answer to the above issue is in the affirmative and hold that the plaintiff's application is premature and wholly unsustainable. I therefore dismiss it with costs.

[24] I also direct that an early date be given for the hearing of the writ action herein.